

No. _____

In The
Supreme Court of the United States

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MICHAEL GIORANGO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

•

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Whether, in light of the text and legislative history of the Travel Act limiting prosecutions to owners, operators, and managers of an illegal enterprise, the Act nonetheless may be applied to a customer, provided he is not a "mere customer."

PARTIES TO THE PROCEEDING

The parties in the United States Court of Appeals for the Eleventh Circuit were the United States of America and Petitioner. In the District Court, Petitioner was indicted with Judy Kruger, Eli Tish, Anna Yeung, Scott Carlton, Jaren Tangle, Darlene Washington, Rose Laws, Linda Laws, Sandy Zimmerman, Deborah Lynn Keller, Theresa Howard, and Denise Bethrum. See *United States v. Giorango*, Docket No. 04-13624, *Per Curiam* Unpublished Order of the United States Court of Appeals for the Eleventh Circuit (dated June 27, 2005); and *United States v. Krueger, et al.*, District Court Docket No. 02-20645-13 CR Jordan.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit in *United States v. Giorango*, Docket No. 04-13624-DD, was ordered unpublished by that Court; however, a copy of the two-page order is included in the Appendix to this Petition. (App. 1, 2)

A pre-trial advisory opinion of the United States District Court for the Southern District of Florida in *United States v. Krueger, et al.*, regarding the dismissal of portions of the indictment as to Petitioner is included in the Appendix to this Petition. (App. 10-22) The District Court's sentencing order as well as a copy of the original indictment are also included in the Appendix to this Petition. (App. 26-69)

JURISDICTION

The United States District Court for the Southern District of Florida had jurisdiction pursuant to 18 U.S.C. § 3231. Petitioner was found guilty after a jury trial and was sentenced on July 7, 2004. Petitioner filed a timely Notice of Appeal on July 15, 2004, and the United States Court of Appeals for the Eleventh Circuit had jurisdiction pursuant to 18 U.S.C. § 1291.

The United States Court of Appeals for the Eleventh Circuit decided Petitioner's case in a two page unpublished order entered on June 27, 2005. (App. 1, 2) Petitioner never filed a Petition for Rehearing in the Court of Appeals.

Petitioner timely invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1952 - The Travel Act

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to -

- (1) distribute the proceeds of any unlawful activity; or
- (2) commit any crime of violence to further any unlawful activity; or
- (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity

and thereafter performs or attempts to perform -

(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or

(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.

(b) As used in this section (i) "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Attorney General.

STATEMENT OF THE CASE

Petitioner was charged in a multi-count indictment with two violations of the Travel Act. (App. 26-69). Of the thirteen defendants, he was the only customer of a prostitution ring who was indicted. The other defendants included the owners and operators (madams), managers, and supervising prostitutes of various brothels. One of the madams was Judy Krueger who operated the Miami brothel.

Petitioner was charged in Count VI with violating the Travel Act in that he made a phone call from Chicago to Ms. Krueger in Florida. (App. 55). As alleged in the indictment, the purpose of the call was to arrange for prostitutes to

attend a Super Bowl party Petitioner was planning for January 31, 2002, at his hotel in Miami. The indictment further alleged that an act of prostitution occurred at the party in Miami.

In Count XVI, Petitioner was charged with violating the Travel Act by placing another Chicago to Florida call on or about March 7, 2002, to arrange for a prostitute for an associate, "Al." (App. 57) Although the indictment alleged a "thereafter act," as required by the Travel Act (*see generally*, 18 U.S.C. § 1952), the indictment did not specify what the "thereafter act" was. (App. 57)

The Trial Testimony and Evidence

The Government began its case with a stipulation that a series of tape recorded conversations between Petitioner and Ms. Krueger were true and accurate. (Tr. 87-89). The parties also stipulated that Government's transcriptions of those recordings were fair and accurate transcripts of the tape recorded conversations. (Tr. 188, 189).

After presenting the stipulations, the Government called Judy Krueger. She testified that she was in the prostitution business, as a madam, for 20 years. (Tr. 190-92). Krueger charged \$350 per hour for assignments occurring in her hotel condominiums and \$400 per hour for "out calls" to locations picked by the clients. (Tr. 190-92). The prostitutes kept 60 percent of the hourly fee plus any tip. Forty percent was paid to Ms. Krueger. *Id.*

Krueger admitted she was part of a national ring, "The Circuit," which included brothels in Chicago, New York, Los Angeles, and other locations. (Tr. 190-94). There

was a madam in each city and the prostitutes circulated from one city to the next. Ms. Krueger grew her business through word of mouth. *Id.*

Krueger made all the decisions about which women would work for her and which customers her prostitutes would be allowed to see. (Tr. 192-95). It was Krueger who established all the rules and set the rates. *Id.* Likewise, Krueger arranged all the times and negotiated the locations for assignments. *Id.* When asked about her control over the business, Ms. Krueger testified as follows:

Q. And this is the business that you were managing and operating yourself, is that correct?

A. That's correct. (Tr. 283).

* * *

Q. Michael Giorango was a customer of yours, is that correct?

A. That's correct.

Q. He did not manage or operate your business, is that correct?

A. Not at all.

Q. Michael Giorango paid for services, is that correct?

A. That's correct. . . .

Q. He didn't receive any money, is that correct?

A. Nothing.

Q. You were never in business with Michael Giorango, is that correct?

A. That's correct. (Tr. 286).

Ms. Krueger knew Petitioner as "Danny." As she described their relationship, "[o]ccasionally he would see someone, and then occasionally he would have friends to see someone." (Tr. 197). On January 22, 2002, Ms. Krueger received a call from Petitioner. He asked her whether she would provide prostitutes for a party on January 31st. (Tr. 198-202). Petitioner told her that friends of his would be attending the party and some were "high rollers." *Id.* Petitioner and Krueger then discussed which ladies would attend the party.

At the party, Theresa Howard ("Aloha"), one of the prostitutes Krueger sent to the party, called Krueger and asked who would pay the flat rate of \$400. Aloha's customer [not Petitioner] had tipped her but that customer did not pay the hourly rate. *Id.* Krueger then spoke to Petitioner and he agreed to pay Aloha \$400 for one hour of time she had spent with one of the partygoers. *Id.*

A few days after the party, on February 3, 2002, Petitioner called Krueger from Miami and asked whether she could arrange a date for a friend. They discussed who was available to meet the friend. Their discussions, regarding that particular date, continued in three more calls on February 4th. Finally, by February 5th, the plans were made and Petitioner paid "Dawn" after she met with his friend in a downtown Miami hotel.

David McCranie, an FBI agent, was assigned to investigate Krueger's prostitution business. (Tr. 324-26). Through Agent McCranie, the Government introduced records showing that Petitioner traveled from Chicago to Miami in January of 2002. *Id.* Agent McCranie obtained a wiretap on Ms. Krueger's phone for 60 days. (Tr. 327-30).